

DOCKET FILE COPY ORIGINAL

**McBride**

DELIVERED VIA PRIORITY OVERNIGHT MAIL No.

May 29, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, D.C. 20554

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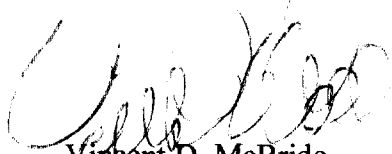
Re **PETITION TO STAY**

Dear Secretary:

I Vincent D. McBride pursuant to of the Commission's rules, 47 C.F.R. 1.41, the Telecommunications Act and U.S.C. enclose, please find the original and \_\_\_\_\_ copies of my Petition for Stay.

Please kindly date-stamp the Original for filing with your office. If you need any help or more information, you may direct any questions concerning this matter to me, the undersigned.

Respectfully submitted,



Vincent D. McBride  
Vincent D. McBride

Enclosures

CC: Honorable William E. Kennard  
Honorable Susan Ness  
Honorable Harold W. Furtchgott- Roth  
Honorable Michael K. Powell  
Honorable Gloria Tristani  
Chief of Legal Dept. FCC

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DOCKET FILE COPY ORIGINAL

In the Matter of )  
 )  
Amendment of the Commission's )  
Rules Regarding Installment )  
Payment Financing For Personal )  
Communications Services (PCS) )  
Licensees )

WT Docket No. 97-82

PETITION FOR STAY

Vincent D. McBride (McBride)<sup>1</sup> hereby respectfully requests, pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. 1.41 and Section 416(b) of the Communications Act, 47 USC §416(b), that the Commission stay the C-Block "Election Date" of June 8, 1998.<sup>2</sup> For the reasons set forth herein, the Election Date must be stayed until a date not less than thirty days following: (1) resolution of procedural and substantive issues concerning the role of the U.S. Department of Justice (DOJ) in implementing the alternative financing options the Commission has adopted in this proceeding; (2) Commission action on pending control group ownership and affiliation rules; and (3) Commission action that, in the wake of its proposed settlement in the Pocket bankruptcy proceeding and the recent federal bankruptcy court

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??Vincent D. McBride is a holding company whose wholly-owned subsidiaries, Vincent D. McBride hold personal communications service ("PCS") licenses in the C-Block.

??See Wireless Telecommunications Bureau Announces June 8, 1998 Election Date For Broadband PCS C-Block Licensees, DA 98-741, rel. Apr. 17, 1998; see also Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Order on Reconsideration of i Second Report and Order, 63 Fed. Reg. 17111 (Apr. 8, 1998) ("Second Restructuring Order").

ruling involving General Wireless, Inc. (*GWI Decision*),<sup>3</sup> establishes a framework of options for C-Block licensees that promotes the build-out of their competitive PCS networks and eliminates distorted incentives to seek alternative financing arrangements in bankruptcy.

#### I. INTRODUCTION

In the short time since the FCC adopted the *Second Restructuring Order* in this Docket, both the Commission and the wireless industry have been subjected to unprecedented developments and uncertainty.<sup>4</sup> Until certain critical components of that uncertainty are removed, the C-Block designated entities ("DEs") for which Congress specifically charged the Commission with creating competitive opportunities are simply not in a position to make any informed decision.

Most importantly, issues that go to the core of the decisions each licensee must make on Election Day remain unresolved. The Commission and the DOJ have yet to announce whether C-Block restructuring options involving license surrender and removal of associated debt obligations require the DOJ's approval, or, if such approval is required, what the procedures

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<sup>??</sup>See *In Re GWI PCS, Inc.* No. 397-39676-SAF-11 (Bankr. N.D. Tax. Apr. 24, 1998).

<sup>??</sup>On May 6, 1998, numerous parties requested reconsideration of the *Second Restructuring Order*. Many of those parties requested relief which, if provided, would materially alter the license payment options available to many C-Block licensees, and would impact the decision-making process of virtually every C-Block licensee.

for securing such approval will be. Without certainty on this issue, C-Block licensees cannot know the effectiveness of any election they may make. In addition, certain core changes to the Commission's control group structure and affiliation rules that directly impact C-Block licensees remain in limbo.

Finally, while Congress has repeatedly admonished the Commission not to create a skewed regulatory approach that encourages bankruptcy rather than build out, this circumstance now exists. First, contemporaneous with its publication of the Restructuring Order, the Commission, whose staff had consistently advised C-Block participants in the Restructuring Process that there would be no separate deals in bankruptcy, officially entertained such a settlement in the Pocket proceeding. Further, barely two weeks after public notice of the *Restructuring Order*, a federal bankruptcy court ruled against the Commission on a constructive fraudulent transfer cause of action brought by GWI. The *GWI Decision* has made the options offered by the Commission to C-Block licensees totally impracticable within the current time schedule. Taken individually or as a whole, these considerations warrant staying the Election Date.

## II. STANDARD

The Commission employs a four-factor test in determining whether to stay an order.<sup>5</sup> The test requires assessment as to whether (1) a movant is likely to prevail on the merits; (2) a movant will suffer irreparable harm in the absence of a stay; (3) a stay will not injure other parties; and (4) a stay is in the public interest. These factors are not to be applied rigidly; rather, "[t]he test is a flexible one."<sup>6</sup> As the Commission has recently recognized, "a stay may be granted based on a high probability of success and some injury, or vice-versa."<sup>7</sup> In the current situation, all four factors support granting the instant motion and thereby staying the Election Date.

## III. ARGUMENT

- A. The Commission Has Publicly Conceded That C-Block Licensees Currently Lack Information Critical To The Election Date Decision Process.

On March 30, 1998, Chairman Kennard wrote a letter responding to questions posed by the leadership of the House Commerce Committee concerning resolution of unresolved, critical issues such as the Commission's Part 1 Re-Write of attribution

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??Memorandum Opinion and Order, 12 FCC Pcd 21872, DA 97-2622, rel. (Dec. 17, 1997) (Com. Car. Bur.) ("PCIA Stay Order"); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); Washington Metro Area Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

??Population Institute v. McParson, 797 F.2d, 1062, 2078 (D.C. Cir. 1986).

??PCIA State Order, at N. 22, citing Cuoto v. United States Nuclear Regulatory Commission, 772 F.2d 972, 974 D.C. Cir. 1995.

and control group rules,<sup>8</sup> and coordination with the Department of Justice on debt forgiveness procedures for licensees electing to return some or all of their C-Block Commission spectrum. In that letter, Chairman Kennard conceded that resolution of these issues is critical to allowing C-Block licensees "to make business decision with full knowledge of the governing rules." In his letter, Chairman Kennard also noted that the Commission would consider these issues in a timely manner so that licensees could make informed and meaningful decisions, specifically stating that the Commission would ensure adoption of the rule well in advance of the election date.

Chairman Kennard's letter demonstrates that the Commission fully appreciates that action on key issues is a prerequisite for holding an election. As of this date, however, such action has not occurred. It is wholly unreasonable, arbitrary, and capricious for the Commission to force licensees to make critical business decision involving the waiver of property rights without adequate information. Against this background, Vincent D. McBride respectfully submits that it has made a substantial case on the merits, and that a stay should be granted in this instance.

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<sup>8</sup>Amendment of Parc. 1 of the Commission's Rules, Competitive Bidding Procedures/FCC 97/413, rel. Dec. 31, 1997.

B. Absent A Stay Will Suffer Irreparable Harm.

The next factor to be addressed in any stay ruling, irreparable harm, also weighs strongly in favor of granting a stay in this instance. Here, a movant need demonstrate only harm which cannot be remedied for the money, time, and energy necessarily expended in the absence of a stay.<sup>9</sup> It is well-settled that injury is "irreparable" if no practical remedy exists to repair it.<sup>10</sup> Thus, even where there are pending administrative appeals, if the proceeding is too protracted, equity may intervene.<sup>11</sup> Even recoverable administrative monetary loss may constitute irreparable harm "where the loss threatens the very existence of a movant's business."<sup>12</sup>

Were Vincent D. McBride and ther C-Block licensees forced to select from the current menu of options, the Commission would effectively guarantee substantial and irreparable harm to such licensees. Absent Commission action on the DOB, Part 1 Rewrite, and GWI/Pocket issues, licensees will be forced to choose from a menu whose procedural foundation remains unconstructed. Given this uncertainty, business plans cannot be firmly negotiated. If

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??Virginia Petroleum, supra, 259 F.2d at 925.

??Bannercraft Clothing Co. v. Renegotiation Bd., 466 F.2d 345, 356, at n.9 (D.C. Cir. 1972), rev'd on other grounds, 415 U.S. 1 (1974, vacated, 466 F.2d and 695 F.2d 1074 (D.C. Cir. 1974).

??Smith v. Illinois Bell Tel. Co., 270 U.S. 587, 591 (1926).

??See Wisconsin Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985).

licensees are forced to turn in one or more of their license under these circumstances, those license, which represent the essential charter of any wireless business, are gone. There are no articulated Commission procedures for retrieving them.

Even if subsequent recapture were a hypothetical possibility as an administrative matter, recapture would be unavailing as a matter of commercial fact. Vincent D. McBride paid one-half million for the property rights that derive from its C-Block licenses. Those license were acquired pursuant to a carefully crafted business plan. Vincent D. McBride has entered into commercial relationships with equipment vendors and customers, based on that business plan. Any forfeiture of license would necessarily disrupt that plan and those relationships. The resulting disruption and losses could not be restored even if the license ultimately were retrieved because it is a fact of commercial life that, once vendors and customers move to establish new relationships, they are generally unwilling and often unable to resume their former relationships. Put simply, moving forward with an election while key issues remain unclarified, is a violation of the Commission's statutory charter to license spectrum in the public interest and its fiduciary responsibilities in its role as commercial lender to C-Block licensees.

Vincent D. McBride and all other C-Block licensees do not have the option of retaining all of their licenses and allowing Election Day to pass without making an election on the chance that the FCC or a court eventually will resolve pending issues.



The Commission has made clear that Election Day is a one-time-only, all-or-nothing proposition, and that any entity that fails to choose alternative options that day has forsworn such alternatives forever. Thus, absent a stay, Vincent D. McBride will be irreparably harmed.

C. A Stay Would Not Harm Other Interested Parties.

On this issue, a movant needs to show that issuance of a stay would not have a "serious adverse effect" on other interested persons.<sup>13</sup> The injury to other parties cannot be speculative or slight; rather, others must suffer some serious and palpable injury resulting from a grant of this petition. The only two categories of interested parties affected by this petition are: (1) other C-Block licensees similarly situated to Vincent D. McBride; and (2) potential participants in a C-Block re-auction. No one in either category will suffer any measurable harm, much less a serious adverse effect, as a result of staying the Election Date.

The vast majority of C-Block licensees would be relieved to have additional time to assess their options, work out disaggregation or partitioning arrangements, or otherwise finalize plans with respect to their spectrum. All face the same decision making process as Vincent D. McBride, and today all have the same incomplete information on which to base such an important determination. In any event, grant of a stay would not

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<sup>13</sup> Virginia Petroleum, supra, 259 F.2d at 925.

delay any decision that they may desire to take. Indeed, the Commission has received numerous Petitions for Further Reconsideration that request action on the issues discussed herein prior to requiring licensees to make an election. None of those petitions have been acted upon at this writing. Thus, a stay would benefit, not harm, this category of interested party.

Potential applicants for the upcoming FCC re-auction of C-Block spectrum also will not be harmed by a stay. Any argument that a stay could delay their entry into the marketplace is theoretical, not real. It is also speculative. There is no certainty, or even near certainty, that granting a stay will delay re-auctions, or that potential participants in such re-auctions will be the high bidder on any spectrum auctioned therein. In any event, whatever delaying effect a stay may have upon re-auctions is entirely within the Commission's discretion. Rapid and appropriate action by the Commission on the issues discussed herein will ensure that delay, if any, will be de minimus.

In sum, no substantial harm will come to any other interested party as a result of granting of this petition.

D. Granting This Petition Will Further The Public Interest.

The interests of private litigants must give way to the realization of public purposes.<sup>14</sup> In assessing where the public interest lies, the Commission must look first to its

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??Virginia Petroleum, *supra*, 259 F.2d at 925.

congressional mandate. When Congress granted to the Commission's authority to conduct auctions, it directed the Commission to make genuine opportunities available to small business.<sup>15</sup> The mandate is a continuing one, as the Commission recognized when it determined that restructuring was necessary.

Congress' directive covers both substantive and procedural decisions. In determining whether to grant this motion, the Commission must assess whether inaction will impair the opportunities available to small business. As detailed above, the Commission's decision to grant or deny a stay will undoubtedly have material and permanent consequences to Vincent D. McBride and other similarly situated licensees.

Granting this petition will further the public interest. Giving Vincent D. McBride and other C-Block licensees the information they need to make rational choices on election day will foster competition, preserve the economic viability of numerous small businesses, and expedite administrative action on the underlying issues which have led to this petition.

Expediting administrative action is perhaps the key consideration here. Vincent D. McBride has expressed its views to the Commission on all of the currently unresolved issues discussed in this Petition. While Vincent D. McBride believes those views should be adopted by the Commission, the over-arching point here is how important is it for the Commission to make

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<sup>15</sup>Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Sec. 6002(b), 107 at 312 (1993).

considered decisions and announce them expeditiously, prior to Election Day.

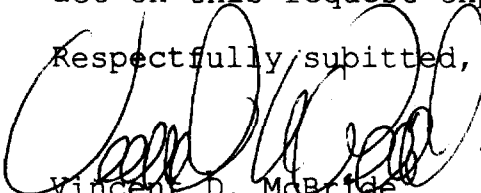
The public interest also favors preserving the viability of existing entities that have paid over \$1 billion to the federal government and commenced the construction and build-out of competitive PCS networks. Grant of a stay would also serve the public interest by enhancing competition. Business strategies advanced by C-Block licensees are consistent with and, in fact, facilitate, the Commission's goals concerning the provision of competitive telecommunications services and the participation of small businesses, women and minorities in the provision of such services. C-Block licensees should be given every reasonable opportunity to succeed in the marketplace, both because of what they have contributed to date and because of how they are positioned to contribute in the future by rapidly deploying competitive PCS services across the country.

#### IV. CONCLUSION

Vincent D. McBride has demonstrated herein a reasonable basis for staying the Election Date. The decisions licensees must make when that day arrives involve, potentially, the voluntary alienation of their ultimate charter as regulated wireless carriers -- their licenses. It is nonsensical for Vincent D. McBride and others to be required to make such decisions when the Commission itself has publicly admitted that information critical to the decision-making process is not yet available. Under those circumstances, Vincent D. McBride likely will prevail on the merits of its pending further reconsideration petition, which requests action on the DOJ, Part 1 Rewrite, and GWI issues prior to Election Day. Vincent D. McBride also will be harmed irreparably in the absence of a stay. Other interested parties will not be injured in any meaningful way by grant of a stay, and the public interest would be served by such grant. For these reasons, Vincent D. McBride respectfully requests that the instant petition be granted.

Vincent D. McBride also respectfully requests that the Commission act on this request expeditiously.

Respectfully submitted,

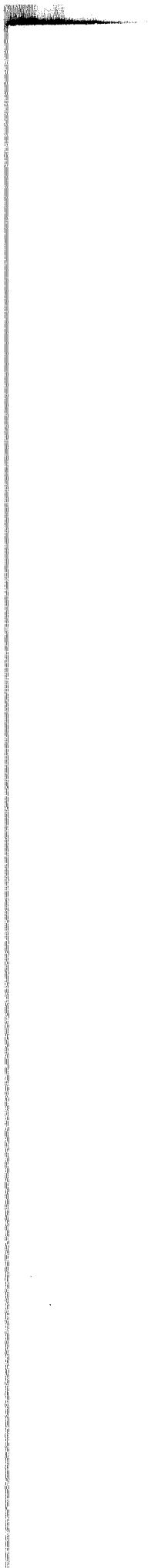
  
Vincent D. McBride

MAY 30, 1998

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**EMERGENCY MOTION FOR  
STAY**

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2655 30th Street, #203  
Santa Monica, California 90405  
(310) 452-4003

Petitioner Vincent D. McBride

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

VINCENT D. MCBRIDE, ) Case No.:  
)  
Petitioner, )  
) MOTION FOR EXPEDITIOUS  
) CONSIDERATION OF EMERGENCY  
v. ) MOTION FOR STAY PENDING  
) REVIEW  
)  
THE FEDERAL COMMUNICATIONS )  
COMMISSION and THE UNITED )  
STATES, )  
)  
Respondents.. )  
\_\_\_\_\_ )

**MOTION FOR EXPEDITIOUS CONSIDERATION OF  
EMERGENCY MOTION FOR STAY PENDING REVIEW**

Vincent D. McBride ("McBride"), pursuant to the District of Columbia Circuit Rule 27(f), hereby moves the Court for expeditious consideration of McBride's Motion for Stay Pending Review ("Emergency Motion"), filed herewith. As described in the Emergency Motion and the Petition for Review filed herewith, June 8, 1998 is a critical point of no return for McBride and similarly situated licensees, and, therefore, McBride respectfully requests that the Court act upon the Emergency Motion by Friday, June 5, 1998.



By its Emergency Motion, McBride seeks a stay of an Order (the "Order") of the Federal Communications Commission ("FCC") which

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requires the financially distressed holders of certain FCC licenses, including McBride, to make a critical election among several impracticable options for restructuring the financially troubled licensees' debt to the FCC. The Order was published in the Federal Register on April 8, 1998. As set out in detail in McBride Emergency Motion, the Order is currently scheduled to be implemented on June 8, 1998. On that date, McBride and other licensees will be required to make irrevocable choices which will essentially determine their survival as going business concerns.

Accordingly, the usual briefing schedules of both the FCC (where McBride has sought reconsideration of the Order and postponement of the June 8, 1998 election date) and of this Court will not permit a decision on the merits of the Emergency Motion in time to prevent irreparable harm to McBride and similarly situated licensees.

In accordance with District of Columbia Circuit Rule 27(f), Vincent D. McBride has communicated this request and the reasons therefor by telephone to the Court Clerk's office, and the FCC's Office of General Counsel.

Final Court action on the Emergency Motion is necessary before June 8, 1998.

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WHEREFORE, McBride's Motion for Expeditious Consideration of McBride's Emergency Motion for Stay Pending Review should be granted.

Respectfully submitted,

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Petitioner Vincent D. McBride

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

VINCENT D. MCBRIDE,

Petitioner,

v.

THE FEDERAL COMMUNICATIONS  
COMMISSION and THE UNITED

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Case No.:

EMERGENCY MOTION FOR  
STAY PENDING REVIEW

STATES, )  
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 Respondents.. )  
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**MOTION FOR STAY PENDING REVIEW**

Vincent D. McBride ("McBride"), pursuant to Federal Rule of Appellate Procedure 18 and District of Columbia Circuit Rule 18, hereby move the Court, on an emergency basis, for a stay of the June 8, 1998 implementation of an Order (the "Reconsideration Order") of the Federal Communications Commission "(FCC)". 1, 2, 3 As set forth in detail herein, in the absence of a stay on June 8, 1998, McBride and similarly situated small business PCS licensees will be forced to make crucial, irrevocable and complex business decisions in the absence of rulings which the Chairman of the FCC has stated are prerequisites to such decisions, will be forced to elect among options involving partial loan forgiveness which the FCC may not have the power to grant, and

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??Simultaneous with the filing of this Motion, McBride has filed a Petition for Review of the Reconsideration Order and a Motion for Expeditious Consideration of this Motion. McBride hereby incorporates by reference the Petition for Review and the exhibits attached thereto into this Emergency Motion for Stay.

??As required by Rule 18 and Circuit Rule 18, McBride has attempted to obtain the relief requested herein from the FCC. On May 8, 1998, McBride filed a Petition for Reconsideration of the Reconsideration Order, including a request that the June 8, 1998 deadline be extended. On May 29, 1998 McBride filed a Petition for Stay of the June 8, 1998 deadline. As of this writing the FCC has not acted on either Petition.

??In accordance with District of Columbia Circuit Rule 18(a)(2), McBride has notified opposing counsel of the filing of this Emergency Motion by telephone calls to the FCC's Office of General Counsel.

will be confronted with a set of "restructuring" options which are not commercially viable and will have the opposite effect from the relevant statutory mandate that the FCC facilitate the prompt entry of small business competitors into the emerging PCS industry.

### **Legal Standard**

In determining a Motion for a Stay of Agency Action pending judicial review, the Court weighs four factors: (1) the likelihood that the moving party will prevail on the merits; (2) the prospect of irreparable injury to the moving party if relief is withheld; (3) the possibility of harm to other parties if relief is granted; and (4) the public interest. See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 842 (D.C. Cir. 1977) ("WMATC"); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); D.C. Circuit Rule 18(a)(1); D.C. Circuit Handbook of Practice and Internal Procedures 60-61 (1997).

As this Court has stated, "a court confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits." WMATC, 559 F.2d at 843. A "mathematical probability of success" is not required. Id. at 844. "An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant." Id. A movant for a stay must demonstrate "either a combination of

probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor." Id. (quoting Charlie's Girls, Inc. v. Revlon, Inc., 485 F.2d 953, 954 (2d Circ. 1973) (per curium)).

### **Factual Background**

This proceeding arises out of a series of actions and omissions of the FCC in connection with the licensing of a set of radio frequencies for use by private companies in the development and implementation of a new individual communications product, "Personal Communications Systems" or "PCS."<sup>4</sup>

As the Court may recall from having twice granted emergency stays of FCC's auction of PCS licenses (see Telephone Electronics Corp. v. Federal Communications Commission, 1996 U.S. App. LEXIS 4942 (D.C. Cir. March 15, 1995); Omnipoint Corp. v. Federal Communications Commission, 1995 U.S. App. LEXIS 20518 (D.C. Cir. July 27, 1995); see also Omnipoint Communications v. Federal Communications Commission, 78 F.3d 620 (D.C. Cir. 1996) (affirming agency action taken on remand)), the FCC undertook to make the PCS Spectrum available to private parties through a competitive bidding process. The PCS Spectrum was auctioned in six segments, denominated the A, B, C, D, E and F blocks. Id.<sup>5</sup> As this Court previously noted:

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??A PCS system relies on ground stations to send and receive digital radio signals to and from the customers of that PCS system on radio frequencies (the "PCS Spectrum") licensed for this purpose.

??The geographic areas of the licenses in the different blocks overlapped. Accordingly, successful bidders in different blocks might be competitors in the same PCS market.

Blocks C and F were designated "entrepreneurs' blocks." Eligibility for these blocks was limited "to entities that, together with their affiliates and certain investors, have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million." [citation omitted] The rules establishing the entrepreneurs blocks were adopted by the Commission in order to satisfy 47 U.S.C. §309(j)(3)(B), which mandated that the Commission promulgate rules that would "disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."

Omnipoint, 78 F.3d at 626. The C-block PCS Spectrum auctions concluded on May 6, 1996 and July 16, 1996.

McBride, a qualifying small business, was the successful bidder in the C-block auction for a large number of licenses, in the total amount of approximately \$500,000. McBride licenses collectively covered major markets across the United States, providing McBride with a "national footprint," a critical positive factor in obtaining the necessary build-out financing. Id. The company placing the next highest total of successful bids was General Wireless, Inc. (approximately \$1 billion).

Because of the extensive equipment and construction required, "[b]roadband PCS is a highly capital intensive business." Omnipoint, 78 F.3d at 626 ("[T]he primary impediment to participation by designated entities is a lack of access to capital."). And because of the absence of income during the construction process and the very nature of the businesses qualified to bid, C-block licensees must obtain financing against anticipated revenues to be generated once the PCS system is

complete. Id. ¶¶ 11, 12. Further, pursuant to 47 U.S.C. § 309(j)(4)(A), the C-block auction winners were permitted to pay their bid amounts (net of down payments) in a series of installments, with interest, in recognition of the fact that the qualified small businesses, virtually by definition, would be unable to pay the entire face value of their bids in a lump sum prior to build-out. Id. ¶ 11. In short, payment terms and build-out financing are essential for C-block licenses if Congress' express purpose of disseminating PCS licenses among a wide variety of applicants, including small businesses, is to be accomplished.

In spite of the facts that auctions for the C-block PCS Spectrum were completed in May and July 1996 and that the successful bidders were obliged to pay up-front deposits and down payments totalling in excess of \$1 billion (including the approximately \$500,000 paid by McBride), the FCC did not actually grant many of the high bidders including McBride their licenses until January 1997. This, despite precedent in an earlier PCS Spectrum auction, primarily involving large, incumbent cellular operators, where the FCC granted contested licenses within three months of the auction's close. The delay in granting the largest bidders' C-block licenses effectively frustrated the ability of the winning C-block bidders to obtain the financing necessary to build out their PCS systems, because the market for PCS Spectrum suffered an unprecedented decline due in substantial part to FCC actions in the interim period. Id.

In the months following the C-block auction, but prior to issuance of the C-block licenses, the FCC commenced the D, E, and F-block auctions. Id. ¶ 14. The winning bids in the D, E, and F-block auction were far lower than the winning bids in the C-block auctions. Id. ¶ 15. Thus, by the time the FCC issued many of the largest bidders' C-block licenses in January 1997, the market value of PCS Spectrum licenses had dropped precipitously. Id. The FCC's failure to issue licenses to C-block winners during the intervening months precluded those C-block winners from locking in the necessary -- and then available -- financing for the build-out of their PCS systems. Id. ¶ 16. By January 1997, however, the potential sources of financing -- by then aware of the dramatic drop in the market value of the PCS Spectrum (and the concomitant lower cost structure of the C-block licensees' competitors) -- were unwilling to provide financing to McBride and other C-block auction winners. Id.

In the face of the financing problems created by the FCC's delay in issuing the C-block licenses, and at the request of the FCC, some of the winning C-block bidders, including McBride, submitted a request to the FCC for a one-year annualization adjustment to their installment payment schedule. Id. ¶ 17. In response, on March 31, 1997, instead of granting the annualization adjustment requested, the FCC unilaterally suspended the deadline for installment payments for all C-block licensees. Id. The FCC's unilateral action of suspending C-block installment payments entirely compounded the difficulties



facing C-block licensees in obtaining financing, because of the uncertainty regarding when and how the FCC would re-start installment payment schedules, and because the FCC's action was viewed by potential financing sources as further confirmation that the prices paid for C-block licenses were not commercially sustainable and that all of the C-block licensees were in financial trouble. Id. ¶ 18.

The FCC, fully aware of the quandary in which the C-block licensees found themselves, instituted a proceeding to address the adjustments that should be made with regard to the troubled C-block licensees' installment payment financing in order to accomplish the statutory purpose of disseminating a portion of the PCS Spectrum to small and minority and women-owned businesses and encouraging competition. The result of the proceeding was the Second Report and Order In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Release No. FCC 97-342, adopted September 25, 1997 (the "Second Report") and published in the Federal Register on October 24, 1997 \*(attached as Exhibit B to McBride's Petition for Review, filed herewith).

The Second Report provided that C-block licenses could elect one of three "workout" options -- disaggregation, amnesty or prepayment -- or could (theoretically) continue under the original installment payment terms (the status quo option).

The disaggregation option allowed a licensee to surrender half of the spectrum covered by each license (fifteen out of